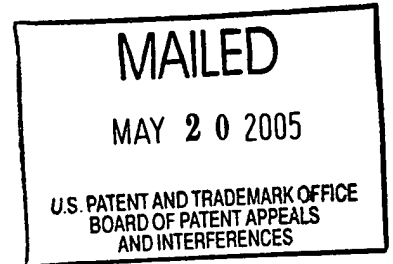


The opinion in support of the decision being entered today was **not** written for publication and is **not** precedent of the Board.

Paper No. 48

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES



Ex parte LUIS J. RODRIGUEZ

Appeal No. 2005-0041
Application No. 09/978,215

ON BRIEF

Before KIMLIN, TIMM and PAWLIKOWSKI, Administrative Patent Judges.
PAWLIKOWSKI, Administrative Patent Judge.

ON REQUEST FOR REHEARING

Appellant has submitted a second Request for Rehearing (hereafter "Second Request") in response to Paper No. 46 (our Decision on Rehearing, mailed on March 31, 2005).

On page 1 of our Decision for Rehearing mailed on March 31, 2005, we indicated that the rule governing a request for rehearing is now located at 37 CFR § 41.52. See footnote 1 of

Paper No. 46. This rule is reproduced below, in its entirety, wherein the text in bold is for emphasis only.

§ 41.52 Rehearing.¹

(a)(1) Appellant may file a **single** request for rehearing within two months of the date of the original decision of the Board. **No request for rehearing from a decision on rehearing will be permitted, unless the rehearing decision so modified the original decision as to become, in effect, a new decision, and the Board states that a second request for rehearing would be permitted.** The request for rehearing must state with particularity the points believed to have been misapprehended or overlooked by the Board. Arguments not raised in the briefs before the Board and evidence not previously relied upon in the brief and any reply brief(s) are not permitted in the request for rehearing except as permitted by paragraphs (a)(2) and (a)(3) of this section. When a request for rehearing is made, the Board shall render a decision on the request for rehearing. The decision on the request for rehearing is deemed to incorporate the earlier opinion reflecting its decision on appeal, except for those portions specifically withdrawn on rehearing, and is final for the purpose of judicial review, except when noted otherwise in the decision on rehearing.

(2) Upon a showing of good cause, appellant may present a new argument based upon a recent relevant decision of either the Board or a Federal Court.

(3) New arguments responding to a new ground of rejection made pursuant to § 41.50(b) are permitted.

(b) Extensions of the time under § 1.136(a) of this title for patent applications are not applicable to the time period set forth in this section. See § 1.136(b) of this title for extensions of time to reply for patent applications and § 1.550(c) of this title for extensions of time to reply for ex parte reexamination proceedings.

¹This rule is effective as of September 13, 2004; 69 Fed. Reg. 49960 (August 12, 2004); 1286 Off. Gaz. Pat. Office 21 (September 7, 2004).

As indicated in the above reproduced rule, a second request for rehearing is not permitted "unless the rehearing decision so modified the original decision as to become, in effect, a new decision, and the Board states that a second request for rehearing would be permitted." Our Decision on Rehearing, mailed on March 31, 2005, did not so modify the original decision mailed on January 28, 2005, and also did not state that a second request for rehearing would be permitted.

Hence, in accordance with 37 CFR § 41.52, appellant's Second Request is not permitted, and is accordingly, denied, pro forma.

DENIED



EDWARD C. KIMLIN
Administrative Patent Judge



CATHERINE TIMM
Administrative Patent Judge



BEVERLY A. PAWLIKOWSKI
Administrative Patent Judge

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) BOARD OF PATENT
) APPEALS AND
) INTERFERENCES

BAP/sld

Appeal No. 2005-0041
Application No. 09/978,215

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